



**UNITES STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

FRENKEL LAMBERT WEISS WEISMAN & GORDON, LLP
80 Main Street, Suite 460
West Orange, NJ 07052
973- 325-8800
File No.: 03-017487-B04
Douglas McDonough, Esq.
Attorney ID: DM0973
DMcDonough@flwlaw.com
Attorney for The Bank of New York Mellon, f/k/a The Bank of
New York, as trustee, on behalf of the holders of the Alternative
Loan Trust 2005-62, Mortgage Pass-Through Certificates Series
2005-62, Secured Creditor

Order Filed on January 3, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Case No.: **18-30162-VFP**

Chapter 13

Judge Vincent F. Papalia

In Re:

Francis D Avella aka Frank Avella

Debtor(s).

ORDER RESOLVING MOTION TO VACATE STAY

Recommended Local Form Modified

The relief set forth on the following page, numbered two (2) through four (4), is hereby

ORDERED.

DATED: January 3, 2020



Honorable Vincent F. Papalia
United States Bankruptcy Judge

Debtor: **Frank Avella**
Case No.: **18-30162-VFP**
Caption of Order: **Order Resolving Motion to Vacate Stay**

Upon the motion of THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE ALTERNATIVE LOAN TRUST 2005-62, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-62 (the “Movant”), under Bankruptcy Code section 362(d) for relief from the automatic stay (the “Motion”) as to certain real property commonly known as 1312 43rd Street, North Bergen, NJ, (the “Collateral”), and the Debtor(s) having opposed the Motion, and the Court having considered the submissions of the parties, and argument, if any, and for cause shown, it is ORDERED that the stay shall continue against the Collateral, subject to the following conditions:

1. Status of Post-Petition Arrearages:

- a. The account is overdue for 13 months, from November 2018 through November 2019.
- b. The account is overdue for 13 payments of \$3,337.99 per month.
- c. Movant acknowledges suspense funds in the amount of \$0.00.
- d. Based on 1.a. through 1.c, the total arrearages due through November 2019 is \$43,393.87.

2. Debtor(s) shall cure all post-petition arrearages outlined in Paragraph 1, above, as follows:

- a. Immediate payment shall be made upon entry of this order in the amount of \$10,000.00.
- b. Debtor shall make a payment of \$5,000.00 within two (2) weeks of the entry of this order.

Debtor: **Frank Avella**
Case No.: **18-30162-VFP**
Caption of Order: **Order Resolving Motion to Vacate Stay**

-
- c. The remaining \$28,393.87 shall be cured through the Debtor's Chapter 13 Plan.
- i. Secured Creditor may file an amended Proof of claim to reflect these additional arrears being paid through the Plan.
 - ii. Should Secured Creditor not file an amended Proof of Claim, this order shall amend the Proof of Claim to the extent it differs from the terms put forth herein.
3. Beginning in December 2019, Debtor(s) shall resume making regular monthly mortgage payments.
4. The Debtor shall file a modified plan within 15 days of entry of this order.
5. If any payments outlined in this Order are not made within thirty (30) days of the date the payment is due, then the Movant may obtain an Order Vacating the Automatic Stay as to the Collateral by filing with the Bankruptcy Court a Certification of Default specifying the failure to comply with this Order.
6. In the event this case is converted to Chapter 7, the Debtor(s) shall cure all arrears within ten (10) days from the date of conversion to bring the account contractually current.
- a. If the loan is not brought current after conversion, Movant may file a Certification of Default with the Court.
7. This Order survives any loan modification between the Movant and the Debtor(s) agreed to and executed during the instant bankruptcy proceeding.

Debtor: **Frank Avella**

Case No.: **18-30162-VFP**

Caption of Order: **Order Resolving Motion to Vacate Stay**

-
- a. If any regular mortgage payment due after the execution of a loan modification is more than thirty (30) days late, Movant may file a Certification of Default with the Court.
8. Any Certification of Default filed pursuant to the Order shall be served on the Chapter 13 Trustee, the Debtor(s) and Counsel for the Debtor(s).
9. The Movant is awarded attorney's fees of \$850.00, and costs of \$181.00 for a total of \$1,031.00, to be paid through the Chapter 13 Plan

Certificate of Notice Page 5 of 5

United States Bankruptcy Court
District of New JerseyIn re:
Francis D Avella
DebtorCase No. 18-30162-VFP
Chapter 13**CERTIFICATE OF NOTICE**

District/off: 0312-2

User: admin
Form ID: pdf903Page 1 of 1
Total Noticed: 1

Date Rcvd: Jan 03, 2020

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jan 05, 2020.

db +Francis D Avella, 4306 Newkirk Avenue, Apartment#1, North Bergen, NJ 07047-2710

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Jan 05, 2020

Signature: /s/Joseph Speetjens**CM/ECF NOTICE OF ELECTRONIC FILING**

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on January 3, 2020 at the address(es) listed below:

Denise E. Carlon on behalf of Creditor Specialized Loan Servicing as Servicer for Deutsche Bank National Trust Company, as Trustee for IndyMac INDX Mortgage Loan Trust 2004-AR10, Mortgage Pass-Through Certificates, Series 2004-AR10 dcarlon@kmlawgroup.com, bkgroup@kmlawgroup.com

Denise E. Carlon on behalf of Creditor Specialized Loan Servicing, LLC as servicer for Deutsche Bank National Trust Company, as Trustee for IndyMac INDX Mortgage Loan Trust 2004-AR10 dcarlon@kmlawgroup.com, bkgroup@kmlawgroup.com

Douglas J. McDonough on behalf of Creditor The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-62, Mortgage Pass-Through Certificates Series 2005-62 DMcDonough@flwlaw.com

Herbert B. Raymond on behalf of Debtor Francis D Avella herbertraymond@gmail.com, raymondmail@comcast.net;bankruptcyattorneys@comcast.net;herbertraymond@gmail.com;carbonell_c@hotmail.com;kdelyon.raymond@gmail.com;herbertraymond5967@yahoo.com;raymondlaw5622@gmail.com;courtemail5789@gmail.com

Marie-Ann Greenberg magecf@magtrustee.com

Melissa N. Licker on behalf of Creditor Deutsche Bank National Trust Company, as Trustee for IndyMac INDX Mortgage Loan Trust 2004-AR10, Mortgage Pass-Through Certificates, Series 2004-AR10 Under the Pooling and Servicing Agreement Dated Se NJ_ECF_Notices@mccalla.com

Melissa N. Licker on behalf of Creditor Specialized Loan Servicing, LLC as servicer for Deutsche Bank National Trust Company, as Trustee for IndyMac INDX Mortgage Loan Trust 2004-AR10 NJ_ECF_Notices@mccalla.com

Melissa N. Licker on behalf of Creditor Deutsche Bank National Trust Company, as Trustee for IndyMac INDX Mortgage Loan Trust 2004-AR10, Mortgage Pass-Through Certificates, Series 2004-AR10 as serviced by Specialized Loan Servicing, LLC NJ_ECF_Notices@mccalla.com

Sean M. O'Brien on behalf of Creditor The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-62, Mortgage Pass-Through Certificates Series 2005-62 DMcDonough@flwlaw.com

U.S. Trustee USTPRegion03.NE.ECF@usdoj.gov

TOTAL: 10